

Although Litner does disclose that the stent can include “polymeric materials (both natural and synthetic), ceramic materials, composite materials, metals, metal oxides, and combinations of such materials,” Litner does not disclose the combination of a ceramic fiber “intertwined” with a metal fiber, as asserted by the Examiner. On the contrary, the only fibers that Litner discloses are biodegradable polymeric fibers. Accordingly, the rejection is in error and must be withdrawn.

Furthermore, one having ordinary skill in the art would not find it obvious to make the stent of Litner with “at least two fibers, the at least two fibers including a first fiber and a second fiber, the first fiber being a ceramic fiber, the second fiber being a non-ceramic fiber comprising [a metal], wherein the ceramic fiber is intertwined with the non-ceramic fiber,” as recited in independent claim 19, based on the disclosure of Litner. Litner discloses the preferred use of a network of biodegradable polymer fibers. Litner, col. 3, lines 23-25. Although Litner lists ceramic materials and metals in a list of other possible materials that could be used in the stent, one having ordinary skill would not receive any guidance from Litner to arrive at the claimed combination of a ceramic fiber that “is intertwined with the non-ceramic fiber,” where the non-ceramic fiber comprises a metal. Accordingly, the rejection cannot be maintained.

Furthermore, the Examiner has not provided any reason for why one having ordinary skill in the art would select “stainless steel, a nickel-titanium alloy, or a combination thereof” as that metal. The Examiner’s asserted reason for why it would have been obvious is “because the Applicant has not disclosed that by having a stainless steel or Nitinol provides an advantage, is used for a particular purpose, or solves a stated problem.” This is not a legally sufficient reason for supporting a conclusion of obviousness; it is a conclusory statement. “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). Furthermore, the Examiner’s statement confuses the burden placed on the Applicant once the Examiner presents a *prima facie* case of obviousness with the standard placed on the Examiner for making a *prima facie* case of obviousness. See MPEP §

706.02(j). Here, the Examiner has failed to present a *prima facie* case of obviousness because the Examiner has failed to allege a reason for why one having ordinary skill in the art would make the asserted selection of "stainless steel, a nickel-titanium alloy, or a combination thereof." Accordingly, the rejection cannot be maintained.

The Office Action is further deficient because independent claim 33 has not been addressed. Claim 33 recites a "medical device, comprising: a tubular structure; and a polymer element on the tubular structure, wherein the polymer element comprises a ceramic fiber comprising a metalloid and each dimension of the ceramic fiber is equal to or greater than one micron." The Examiner has not addressed any of the elements of independent claim 33. Litrer does not disclose, at least, a "polymer element comprising a ceramic fiber," "a ceramic fiber [that] compris[es] a metalloid," or a ceramic fiber where "each dimension of the ceramic fiber is equal to or greater than one micron." Accordingly, the rejection is in error and must be withdrawn.

The Office Action also fails to address any of the dependent claims that depend from either of the independent claims. In particular, as to the claims that depend from independent claim 19, the Examiner has not addressed the elements of dependent claim 20, which recites that the "dimension of the ceramic fiber is equal to or greater than one micron," dependent claim 23, which recites that "the ceramic fiber is knitted with the non-ceramic fiber," dependent claim 24, which recites that "the ceramic fiber is woven with the non-ceramic fiber," or dependent claim 25, which recites that "the ceramic fiber comprises a therapeutic agent." As to the claims that depend from independent claim 33, the Examiner has not addressed the elements of dependent claim 35, which recites that "the ceramic fiber is from about ten microns to about 1,000 microns long," dependent claim 36, which recites that "the ceramic fiber is from about ten microns to about 100 microns long," dependent claim 37, which recites that "the ceramic fiber is from about one micron to about 50 microns wide," dependent claim 38, which recites that "the ceramic fiber is about ten microns wide," dependent claim 39, which recites that "ceramic fiber has an aspect ratio of from about 5:1 to about 500:1," or dependent claim 40, which recites that "the ceramic

fiber has an aspect ratio of from about 5:1 to about 200:1." Applicant requests a full examination of the pending claims.

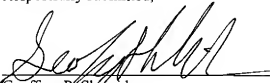
Accordingly, each of the pending claims 19-25 and 33-40 defines patentable subject matter over the cited prior art. Furthermore, because claim 34 depends from allowable independent claim 33, Applicant requests that claim 34 be rejoined. As such, Applicants request that the Examiner allow all pending claims 19-25 and 33-40.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue, or comment does not signify agreement with or concession of that rejection, issue, or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: 3/6/09

  
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